

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEVEN APILADO, LARON CHARLES,  
AND JON RUSS,

Plaintiffs,

v.

THE NORTH AMERICAN GAY  
AMATEUR ATHLETIC ALLIANCE,

Defendant.

No. C10-00682 JCC

DECLARATION OF ROY  
MELANI

I, Roy Melani, declare under penalty of perjury as follows:

1. ***Identity of Declarant.*** I am the Commissioner of the North American Gay Amateur Athletic Alliance (“NAGAAA”), a 501(c)(3) nonprofit volunteer organization. In this capacity, I serve on NAGAAA’s Board of Directors and preside over all meetings of the Board and Council. I direct the policies and enforce the rules of NAGAAA, manage all communications with and about prospective members, and act on behalf of NAGAAA in an emergency not governed by the Bylaws or Softball Code. Attached as **Exhibit 1** is a true and correct copy of the 2008 Instruments of Governance, including the Bylaws and Softball Code, which governed the 2008 Gay Softball World Series. Attached as **Exhibit 2** is a true and correct copy of the 2010 Instruments of Governance, including the Bylaws and Softball Code, which together with amendments adopted in January 2011 currently govern the Gay Softball World Series. Also as Commissioner, I am responsible for handling membership

1 applications, Gay Softball World Series bids, and proposed changes to the bylaws, among  
2 other things.

3 2. **NAGAAA's Purpose.** NAGAAA was founded in 1977 to establish a safe,  
4 welcoming, and affirming space, for members of what was then referred to as the "gay"  
5 community, to gather and play softball. Over the years NAGAAA has embraced more  
6 inclusive language and serves the entire lesbian, gay, bisexual, and transgender ("LGBT")  
7 community. NAGAAA's mission is to promote LGBT competitive softball and the LGBT  
8 community. Attached as **Exhibit 3** is a copy of NAGAAA's website, which NAGAAA  
9 produced in discovery. That copy shows NAGAAA's mission is to "promote[] amateur  
10 sports competition, particularly softball, for all persons regardless of age, sexual orientation or  
11 preference, with special emphasis on the participation of members of the gay, lesbian,  
12 bisexual and transgender (GLBT) community." Attached as **Exhibit 4** is a true and correct  
13 copy of the 2008 Seattle Gay Softball World Series Welcome letter, which the NAGAAA  
14 Board wrote. This letter describes NAGAAA's core mission as "to provide a safe place for  
15 the LGBT community to play softball."

16 One central way NAGAAA seeks to fulfill its mission is by organizing the Gay  
17 Softball World Series, an annual event held in a different host city each year. This event  
18 brings members of the LGBT community together to associate and play softball in an  
19 environment that is uniquely dedicated to the LGBT community. At the Gay Softball World  
20 Series, players can be themselves and can express themselves freely, without fear of ridicule  
21 or humiliation, and with the LGBT community's support. Many members of the LGBT  
22 community come from environments or backgrounds where such self-expression is not  
23 welcome, and especially not in team sports. The Gay Softball World Series ensures that  
24 members of the LGBT community have an opportunity to compete on a national stage and to  
25 celebrate the LGBT community, in all its diversity. The Gay Softball World Series is the only  
26 annual LGBT softball tournament of its kind.

27 Another way NAGAAA works toward its mission is by hosting a talent show at each

1 Gay Softball World Series to celebrate LGBT diversity and to raise money for LGBT aid  
2 organizations.

3 3. **NAGAAA's Structure.** The NAGAAA Council, which is NAGAAA's  
4 legislative body, consists of volunteer representatives from each of NAGAAA's member  
5 leagues and the members of the board of directors, elected by the Council. The Council meets  
6 twice a year to plan the Gay Softball World Series. Each council representative has authority  
7 to vote in the bi-yearly council meetings.

8 NAGAAA's members are local leagues from cities across North America. At the  
9 2008 Gay Softball World Series, NAGAAA had 37 members; it currently has 41. To become  
10 a NAGAAA member, the local league must meet several strict membership criteria, including  
11 identifying as a sports organization in the league's LGBT community. The NAGAAA  
12 Council made this requirement express in January 2010. Attached as **Exhibit 5** is a true and  
13 correct copy of the 2010 Winter Meeting minutes reflecting this change. The NAGAAA  
14 Council must also vote to accept the league as a member. NAGAAA's executive body  
15 consists of a six-member board of directors (five-members in 2008), headed by the  
16 Commissioner.

17 Individual players are not members of NAGAAA; rather, they may be members of  
18 their local leagues. Individual players do not pay NAGAAA membership fees. Instead, they  
19 pay the fees their local leagues set, and the local leagues pay an entry fee to NAGAAA to  
20 send teams to the Gay Softball World Series.

21 4. **NAGAAA Softball Code.** The NAGAAA Council adopted the Instruments of  
22 Governance, which include Bylaws and the Softball Code, to govern play in the Gay Softball  
23 World Series. The Softball Code does not apply to local leagues, their teams, or their players  
24 during the regular season. The Code imposes several strict eligibility requirements on leagues  
25 or cities seeking membership in NAGAAA, and on teams seeking to participate in the Gay  
26 Softball World Series. For instance, the Code caps the number of non-resident players and  
27 pickup players each team may have on its Gay Softball World Series roster. "Non-resident"

1 players are from outside the geographic territory covered by the member league; “pick-up”  
2 players are individuals who did not play on a particular team during the regular season. The  
3 Code also sets forth skill rating requirements and guidelines that all players on every roster  
4 must meet. Based on the skill ratings, teams are assigned to play in the A, B, C, or D  
5 division.

6 Teams submitting rosters for play in the Gay Softball World Series must certify  
7 compliance with all qualifying criteria. The Gay Softball World Series is a qualifying  
8 tournament, and only NAGAAA members can send teams (if they qualify) to the Gay Softball  
9 World Series.

10 The Code also sets forth protest procedures for alleged violations of eligibility and  
11 rating rules. These procedures provide for the convening of a protest committee, which holds  
12 protest hearings to resolve protests. The Code also lists specific penalties depending on the  
13 violation, and provides for internal appeals of protest committee decisions.

14 5. **Rule 7.05.** Since NAGAAA’s inception, the Council has voted to maintain a  
15 limit on the number of heterosexual players eligible to be on the roster of a team participating  
16 in the Gay Softball World Series. When NAGAAA first began, in 1977, there was a no-  
17 heterosexual player policy. In the early 1990s, the Council voted to open the Gay Softball  
18 World Series to non-LGBT family members and friends of team members by permitting up to  
19 two heterosexual players on each Gay Softball World Series roster. Rule 7.05, which  
20 memorializes this rule, applies only to teams participating in the annual Gay Softball World  
21 Series. This limitation is one of many eligibility requirements players and their teams must  
22 satisfy to participate in the Gay World Series.

23 NAGAAA and the Gay Softball World Series are not just about softball. The  
24 purposes of Rule 7.05 are, among others: (a) to ensure a significant number of LGBT players  
25 are represented on teams playing in the Gay Softball World Series, (b) to allow members of  
26 the LGBT community to associate in a supportive environment, and (c) to welcome a limited  
27 number of non-LGBT family members, friends, and supporters of the LGBT community on

1 each team. These goals further NAGAAA's "core mission" of ensuring a safe, welcoming,  
 2 and affirming environment for members of the LGBT community to associate and play  
 3 softball on a national level.

4 The NAGAAA Council has voted to maintain this Rule for over 30 years. The Rule is  
 5 a fundamental part of NAGAAA: a majority of the Council believes (and has believed for 30  
 6 years) that this Rule enables the Gay Softball World Series to be uniquely dedicated to the  
 7 LGBT community, and to provide the welcoming environment that many participants need to  
 8 express themselves. If the Rule were eliminated and entirely or predominately heterosexual  
 9 teams could play in the Gay Softball World Series, the nature of the event would  
 10 fundamentally change. The emphasis on the LGBT community would be diluted, and there  
 11 would be a risk that members of the LGBT community would no longer have a voice at the  
 12 Gay Softball World Series. The message of the event would change from one focused on  
 13 promoting the LGBT community to simply promoting softball, and the event would no longer  
 14 be the Gay Softball World Series.

15 6. ***Code Definitions.*** In 2008, the Code defined "heterosexual" as "having a  
 16 predominate sexual interest in a member or members of the opposite sex." It defined "gay" as  
 17 "having a predominate sexual interest in a member or members of the same sex and includes  
 18 both gay men and lesbians." These definitions were added to the Code many years after  
 19 NAGAAA adopted the policy that is codified in Rule 7.05. In the over eight years that I have  
 20 had a leadership role in the organization, NAGAAA has always understood that references to  
 21 "gay" include persons who self-identify as bisexual. This was NAGAAA's policy in 2008.  
 22 Whenever anyone asked me as Commissioner whether a bisexual person counted toward Rule  
 23 7.05, I told them that person does not. Rule 7.05 only applies to heterosexual participants—  
 24 that is, to participants who are not LGBT. NAGAAA views bisexual persons as part of the  
 25 "Gay Community."

26 At the 2011 Winter Meeting, the NAGAAA Council voted to further clarify the Code.  
 27 The Council voted to remove the prior definition of "gay" and to add a provision that

1 explicitly states that “Gay – includes gay, lesbian, bisexual, and transgender (GLBT or  
2 LGBT) individuals.” It also voted to remove the prior Code definition of “heterosexual” and  
3 to add a provision that clarifies that “Heterosexual – (also referred to as straight, non-GLBT,  
4 non-LGBT or non-gay) means not gay, lesbian, bisexual, or transgender.” Attached as  
5 **Exhibit 6** is a true and correct copy of the Draft 2011 Winter Meeting minutes, memorializing  
6 these legislative decisions.

7       7.       ***Self-Identification.*** Individual players, their teams, and their local leagues are  
8 responsible for complying with all NAGAAA’s Gay Softball World Series eligibility rules.  
9 Thus, NAGAAA relies on the players, teams, and local leagues to self-identify as nonresident,  
10 pickup, or heterosexual, and to meet all division ratings criteria. Attached as **Exhibit 7** is a  
11 true and correct copy of the 2010 Gay Softball World Series roster for Club Hitmen, the San  
12 Francisco Gay Softball League team that replaced D2 and to which plaintiffs Jon Russ and  
13 LaRon Charles belong. That Roster shows the columns for self-identifying as nonresident,  
14 pickup, or heterosexual.

15       8.       ***2008 Protest and Appeal.*** At the 2008 Seattle Gay Softball World Series, the  
16 Atlanta league’s commissioner filed a protest under Rule 7.05 against six players of the D2  
17 team of the San Francisco Gay Softball League. The San Francisco Gay Softball League is a  
18 member of NAGAAA. At the beginning of the protest hearing the D2 team identified one of  
19 the protested players as one of two D2 team members acknowledged to be “heterosexual,” so  
20 the Protest Committee denied the protest as to this player. After the protest hearings for the  
21 remaining five players, the Protest Committee voted to uphold the protests related to LaRon  
22 Charles, Steven Apilado, and Jon Russ. The D2 team was disqualified from their second-  
23 place finish.

24       The D2 team appealed the Protest Committee’s decisions. Attached as **Exhibit 8** is a  
25 true and correct copy of the appeal letter that the National Center for Lesbian Rights  
26 (“NCLR”) sent to me dated September 27, 2008. This copy of the appeal letter was  
27 designated as Exhibit 14 to the deposition of Jon Russ, which I attended on September 21,

2010. I denied the appeal because I found the Protest Committee adhered to the Code and followed all NAGAAA processes. Under the NAGAAA Code, the NAGAAA Commissioner is the person authorized to consider appeals. I have been involved in the NAGAAA leadership for eight years. Throughout my involvement, the standard of review for protest appeals has always been whether the protest committee followed proper procedure in the protest hearing.

9. ***Steven Apilado Deposition Transcript.*** I attended the deposition of Steven Apilado, held on September 22, 2010, in San Francisco. Attached as **Exhibit 9** is a true and correct copy of excerpts of the deposition transcript.

10. ***LaRon Charles Deposition Transcript.*** I attended the deposition of LaRon Charles, held on September 23, 2010, in San Francisco. Attached as **Exhibit 10** is a true and correct copy of excerpts of the deposition transcript.

11. ***Jon Russ Deposition Transcript.*** I attended the deposition of Jon Russ, held on September 21, 2010, in San Francisco. Attached as **Exhibit 11** is a true and correct copy of the excerpts of the deposition transcript.

12. ***LaRon Charles's Orientation Designations.*** Attached as **Exhibit 12** is a true and correct copy of an email LaRon Charles produced to NAGAAA in discovery, designating the sexual orientation of each player on Club Hitmen in 2010. This document was designated as an exhibit in the deposition of Jon Russ, which I attended on September 21, 2010.

13. ***2009 D2 Regular Season Roster.*** Attached as **Exhibit 13** is a true and correct copy of the 2009 Open Division Softball Regular Season Roster for D2. This document was designated as an exhibit in the deposition of Jon Russ, which I attended on September 21, 2010.

14. ***Apilado's Post-2008 Gay Softball History.*** Attached as **Exhibit 14** is a true and correct copy of an email Apilado sent the coach of the D2 team in December 2008. This copy was designated as an exhibit to the deposition of Steven Apilado, which I attended on September 22, 2010. Attached as **Exhibit 15** is a true and correct copy of an email the D2



1 coach sent the team on September 9, 2009, welcoming Apilado back to the team. This copy  
 2 was designated as an exhibit to the deposition of Steven Apilado, which I attended on  
 3 September 22, 2010.

4 15. ***SMASH Softball Tournament.*** Attached as **Exhibit 16** is a true and correct  
 5 copy of the SMASH Softball Tournament website, which was designated as Exhibit 229-Tab  
 6 10 to the Rule 30(b)(6) Deposition of NAGAAA.

7 16. ***Black American Softball Association.*** Attached as **Exhibit 17** is a true and  
 8 correct copy of the Black American Softball Association website, which was designated as  
 9 Exhibit 229-Tab 9 to the Rule 30(b)(6) Deposition of NAGAAA.

10 17. ***USSA Hispanic Program.*** Attached as **Exhibit 18** is a true and correct copy  
 11 of the USSA Hispanic Program website, which was designated as Exhibit 229-Tab 11 to the  
 12 Rule 30(b)(6) Deposition of NAGAAA.

13 18. ***Native American World Series.*** Attached as **Exhibit 19** is a true and correct  
 14 copy of the Native American World Series rules, which was designated as Exhibit 229-Tab 8  
 15 to the Rule 30(b)(6) Deposition of NAGAAA.

16 19. ***Sin City Shootout Softball Tournament.*** Attached as **Exhibit 20** is a copy of  
 17 the Sin City Shootout website, including the tournament rules and the teams that played in it  
 18 in 2011, which I pulled from the internet.

19 20. ***NCLR Press Release.*** Attached as **Exhibit 21** is a copy of the NCLR Press  
 20 Release that NCLR issued the day it filed the complaint in this action, and that plaintiffs  
 21 produced in discovery.

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Executed this 17 day of February, 2011, at Portland, Oregon.

  
Roy Melani

**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 2011, I electronically filed the Declaration of Roy Melani with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- Chris Stoll, attorney for plaintiffs, at [cstoll@nclrights.org](mailto:cstoll@nclrights.org)
- Melanie S. Rowen, attorney for plaintiffs, at [mrowen@nclrights.org](mailto:mrowen@nclrights.org)
- Suzanne J. Thomas, attorney for plaintiffs, at [suzanne.thomas@klgates.com](mailto:suzanne.thomas@klgates.com)

DATED this 17th day of February, 2011.

Rebecca Francis  
Rebecca Francis